



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2004

Mr. Richard J. McGillivray
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

OR2004-4418

Dear Mr. McGillivray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202420.

The Texas Workers' Compensation Commission (the "commission") received a request for information relating to investigations of the Insurance Company of the State of Pennsylvania. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we must address the commission's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Public Information Act must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Additionally, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You failed to raise section 552.108 as an exception to disclosure within the ten day deadline as mandated under section 552.301(b). Further, as you acknowledge, the commission did not submit a copy of the specific information requested within the fifteen day deadline under section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982).

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See* Open Records Decision No. 586 at 3 (1991). Although you raise section 552.108, you have not demonstrated a compelling reason to withhold the information at issue under section 552.108. *Id.* Accordingly, we find the commission has waived section 552.108 in this instance and we determine that none of the information at issue may be withheld under section 552.108. Because section 552.101 can provide a compelling reason to withhold information from disclosure, however, we will address your claim under this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. You contend that the information at issue consists of information in an investigation file that is confidential pursuant to sections 402.092 and 414.005 of the Labor Code. Section 402.092 relates to information maintained in the investigation files of the commission. Labor Code § 402.092. Section 402.092(c) provides that information in an investigation file that is information in or derived from a claim file is governed by the confidentiality provisions of the Labor Code relating to claim file information. *Id.* § 402.092(c). We note that the submitted investigation file information includes information from a claim file; accordingly, we will address the applicability of section 402.083 of the Labor Code to this information.

Section 402.083 provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of

injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. Thus, to the extent that the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold the information under section 552.101 in conjunction with section 402.083 of the Labor Code.

We next address your claim under section 402.092 with respect to the remaining submitted information. Section 414.005 of the Labor Code provides that the commission shall maintain an investigation unit to conduct investigations relating to alleged violations of the Texas Workers' Compensation Act, subtitle A of title 5 of the Labor Code, and commission rules. *See* Labor Code § 414.005; *see also* §§ 414.001, .002. Section 402.092(a) provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in limited circumstances which are not applicable in this instance. *See* Labor Code § 402.092(a). An "investigation file" is "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." *Id.* § 402.092(d). You indicate that the remaining submitted information consists of information compiled or maintained by the commission with respect to a commission investigation into possible violations of the Workers' Compensation Act and the commission's implementing rules. Based on your representations and our review, we determine that the remaining information is confidential under section 402.092 of the Labor Code.

In summary, to the extent the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold such information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The remainder of the submitted information must be withheld under section 552.101 in conjunction with section 402.092 of the Labor Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'David R. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 202420

Enc: Submitted documents

c: Mr. Adam R. Miller
2140 Monterrey Avenue
Dallas, Texas 75228
(w/o enclosures)